



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

VIA FAX (202-863-8654) and CERTIFIED MAIL

DEC 10 2012

Scan Cairncross, Esq.  
Chief Counsel  
Republican National Committee  
310 First Street, SE  
Washington, DC 20003

RE: MURs 6078, 6090, 6108, 6139, 6142, and  
6214 and AF 2512  
Obama for America and Martin Nesbitt, in  
his official capacity as Treasurer  
Obama Victory Fund and Andrew Tobias, in  
his official capacity as Treasurer

Dear Mr. Cairncross:

This is in reference to the complaint you filed with the Federal Election Commission on October 6, 2008, which was designated as MUR 6090, concerning Obama for America and Martin H. Nesbitt in his official capacity as Treasurer, and the Obama Victory Fund and Andrew Tobias in his official capacity as Treasurer, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act").

On August 24, 2010, the Commission found reason to believe Obama for America and Martin Nesbitt in his official capacity as Treasurer violated 2 U.S.C. § 441a(f) of the Act, and authorized an audit pursuant to 2 U.S.C. § 437g. The Commission dismissed allegations that Obama for America and Martin Nesbitt in his official capacity as Treasurer violated 2 U.S.C. §§ 441c and 441f. On March 20, 2012, the Commission found reason to believe Obama for America and Martin Nesbitt in his official capacity as Treasurer violated 2 U.S.C. § 434(b) of the Act. Copies of the Factual and Legal Analyses, which formed the basis for the Commission's determinations, are enclosed.

On August 24, 2010, the Commission also found no reason to believe the Obama Victory Fund and Andrew Tobias in his official capacity as Treasurer violated 2 U.S.C. §§ 441a(f), 441c, and 434(b), and dismissed allegations that the Obama Victory Fund and Andrew Tobias in his official capacity as Treasurer violated 2 U.S.C. § 441f. A copy of the Factual and Legal Analysis, which formed the basis for the Commission's determination, is enclosed.

On December 7, 2012, the Commission accepted a conciliation agreement signed by Obama for America and Martin Nesbitt in his official capacity as Treasurer to resolve their

Sean Cairncross, Esq.  
Chief Counsel, Republican National Committee  
MURs 6078, 6090, 6108, 6139, 6142, and 6214 and AF 2512  
Page 2

violations of the Act. This agreement settles violations of 2 U.S.C. §§ 434(a), 434(b), and 441a(f) identified in the Matters Under Review, as well as violations of 2 U.S.C. § 434(a)(6)(A), which were identified during the Commission's audits. The Commission simultaneously closed the file in this matter. A copy of the Conciliation Agreement with Obama for America and Martin Nesbitt in his official capacity as Treasurer is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

The Act allows a complainant to seek judicial review of the Commission's resolution of this action. *See* 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Camilla Jackson Jones  
Attorney

Enclosures

1. Obama for America Factual and Legal Analysis (8/24/10)
2. Obama for America Factual and Legal Analysis (3/20/12)
3. Obama Victory Fund Factual Analysis (8/24/10)
4. Conciliation Agreement

## BEFORE THE FEDERAL ELECTION COMMISSION

## **CONCILIATION AGREEMENT**

12           This Conciliation Agreement reflects the final resolution of six separate complaints filed  
13  
14          with the Federal Election Commission (the "FEC" or the "Commission") concerning  
15          contributions received during the 2008 presidential campaign by Obama for America and Martin  
16          Nesbitt in his official capacity as Treasurer ("Respondents" or "OFA") and issues identified in  
17          the Final Audit Report of the Commission on Obama for America (Jan. 16, 2007-Dec. 31, 2008).

18 The Commission found reason to believe that Respondents violated 2 U.S.C. § 441a(f) of  
19 the Federal Election Campaign Act of 1971, as amended (“the Act”), by accepting contributions  
20 in excess of the limits applicable to the 2008 presidential election that were not resolved through  
21 refund, redesignation, or reatribution within the 60 day period permitted under the Act.

22 The Commission also found reason to believe that Respondents violated 2 U.S.C.  
23 § 434(b) by misreporting the dates of contributions received through its joint fundraising  
24 representative, the Obama Victory Fund (“OVF”). Although OFA correctly reported the date  
25 OVF transferred those funds to OFA as required, it incorrectly identified the date of receipt of  
26 the underlying contributions as the date of the transfer from OVF to OFA, rather than the date  
27 that the contributions were originally received by OVF.

28 The Commission has further found reason to believe that Respondents failed to file  
29 certain 48-Hour Notices of contributions of \$1,000 or more received after the 20th day but more

MURs 6078, 6090, 6108, 6139, 6142 and 6214, and AF# 2412  
Conciliation Agreement

1 than 48 hours before the 2008 general election, in violation of 2 U.S.C. § 434(a)(6)(A), and  
2 referred the violation to the Reports Analysis Division.

3 In response to a request from Respondents, on July 10, 2012, the Commission approved  
4 merging conciliation of Administrative Fine Matter #2512 ("AF# 2512") with MURs 6078,  
5 6090, 6108, 6142, and 6214 and authorized the Reports Analysis Division to transfer AF# 2512  
6 to the Office of General Counsel.

7 NOW, THEREFORE, the Commission and Respondents, having participated in informal  
8 methods of conciliation prior to a finding of probable cause to believe, do hereby agree as  
9 follows:

10 I. The Commission has jurisdiction over the Respondents and the subject matter of  
11 this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.  
12 § 437g(a)(4)(A)(i).

13 II. Respondents have had a reasonable opportunity to demonstrate that no action  
14 should be taken in this matter.

15 III. Respondents enter voluntarily into this agreement with the Commission.

16 IV. The pertinent facts and law in this matter are as follows:

17 1. OFA is the principal campaign committee for President Barack Obama.  
18 Martin Nesbitt is the treasurer of OFA. From 2007 to 2008, OFA reported raising approximately  
19 \$745 million in contributions from more than 4 million separate contributors.

20 2. OVF is a joint fundraising committee established pursuant to 11 C.F.R.  
21 § 102.17, whose participants were OFA and the Democratic National Committee ("DNC").  
22 Andrew Tobias is the current treasurer of OVF. During the 2008 election cycle, OVF reported

MURs 6078, 6090, 6108, 6139, 6142 and 6214, and AF# 2412  
Conciliation Agreement

1 that it raised over \$198 million in contributions, of which \$85,158,116 were transferred to OFA  
2 on various dates in 2008.

3 Untimely Resolution of Excessive Contributions

4 3. During the 2008 election cycle, the Act prohibited any person from  
5 making contributions to a candidate for federal office or the candidate's authorized political  
6 committee that in the aggregate exceeded \$2,300 each for the primary and general elections.  
7 2 U.S.C. § 441a(a)(1)(A). As a corollary, it was unlawful for a candidate for federal office or the  
8 candidate's authorized political committee to accept contributions that in the aggregate exceeded  
9 \$2,300 each for the 2008 primary and general elections. 2 U.S.C. § 441a(f).

10 4. OFA was limited to accepting contributions from individual donors that in  
11 the aggregate did not exceed \$2,300 each for the primary and general elections. 2 U.S.C.  
12 § 441a(a)(1)(A). Where a committee receives an excessive contribution, the Commission's  
13 regulations give the committee 60 days from the date of receipt to identify and resolve the  
14 excessive contribution via refund, redesignation, or reattribution of the excessive amount.  
15 11 C.F.R. §§ 103.3(b)(3), 110.1(b).

16 5. From 2007 to 2008, OFA accepted a total of \$1,363,529 in contributions  
17 that exceeded the limits set forth in 2 U.S.C. § 441a(a)(1)(A) and that were not resolved through  
18 refund, redesignation, or reattribution within 60 days of receipt as permitted under the Act.  
19 Respondents contend these excessive contributions represent approximately .18% of all  
20 contributions received by OFA during the 2008 election cycle.

21 6. OFA has since resolved the \$1,363,529 in excessive contributions through  
22 the untimely refund, redesignation, or reattribution of those contributions. Of that amount, OFA  
23 resolved \$489,616 before any Commission investigation took place and another \$873,913 after

MURs 6078, 6090, 6108, 6139, 6142 and 6214, and AF# 2412  
Conciliation Agreement

1 receiving the Commission's analysis of information contained in the disclosure reports and  
2 internal records of OFA.

3 Misreporting Dates of Contributions

4 7. The Act requires all political committees to publicly report all of their  
5 receipts and disbursements. 2 U.S.C. § 434. Each report must disclose for the reporting period  
6 and calendar year the total amount of all receipts and the total amount of all disbursements.  
7 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

8 8. The Act requires that an authorized committee of a candidate report the  
9 amount of all receipts from transfers by affiliated committees, as well as the identity of the  
10 affiliated committee and the date of each transfer. 2 U.S.C. § 434(b)(2)(F), (3)(D); 11 C.F.R.  
11 §§ 102.17(c)(3)(iii), (8)(i)(B), 104.3(a)(4), 104.8.

12 9. Commission regulations permit political committees to engage in joint  
13 fundraising with other political committees or with unregistered committees or organizations.  
14 11 C.F.R. § 102.17. After a joint fundraising representative distributes the net proceeds, a  
15 participating political committee is required to report its share of funds received as a transfer-in  
16 from the fundraising representative. *Id.*

17 10. For contribution reporting and limitation purposes, the date a contribution  
18 is received by the joint fundraising representative — not the date received by the recipient  
19 political committee — is the date that the contribution is received by the participating political  
20 committee. 11 C.F.R. §§ 102.17(c)(3)(iii), (c)(8). The participating political committee is  
21 required to report the original date of receipt of the proceeds only after the funds have been  
22 transferred from the fundraising representative. *Id.*

MURs 6078, 6090, 6108, 6139, 6142 and 6214, and AF# 2412  
Conciliation Agreement

1                   11. For the \$85,158,116 in contributions received in transfers from OVF,  
2 Respondents reported the dates that the contributions were transferred to OFA, rather than the  
3 dates on which the underlying contributions were received by OVF, as required by 2 U.S.C.  
4 § 434(b)(2), (4) and 11 C.F.R. §§ 102.17(c), 104.3(a), (b).

5                   48-Hour Notices

6                   12. The Act requires that a candidate's principal campaign committee shall  
7 notify the Commission of all contributions of \$1,000 or more, received by any authorized  
8 committee of the candidate less than 20 days but more than 48 hours before any election in  
9 which the candidate is running. 11 C.F.R. §104.5(f).

10                  13. Respondents did not file 48-Hour Notices for 1,266 contributions totaling  
11 approximately \$1,895,956. See Final Audit Report of Commission on Obama for America (Jan.  
12 16, 2007-Dec. 31, 2008); AF# 2512. Respondents have waived their right to appeal the  
13 \$191,135 administrative fine assessed in AF# 2512, and are paying the full amount of the fine as  
14 part of the penalty set forth in this agreement.

15                  14. The Commission found that the majority of the contributions for which  
16 48-Hour Notices were required but not filed, including 711 contributions totaling approximately  
17 \$1,046,045, arose from transfers from OVF.

18                  V. In the interest of resolving this matter promptly, Respondents admit the following:

19                  1. Respondents violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 103.3(b)(3),  
20 110.1(b) by accepting \$1,363,529 in excessive contributions, which they failed to refund,  
21 redesignate, or reattribute within 60 days of receipt, as required by the Act.

22                  2. Respondents violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 102.17(c),  
23 104.3(a)(3) by misreporting the original date of receipt for contributions received through OVF.

MURs 6078, 6090, 6108, 6139, 6142 and 6214, and AP# 2412  
Conciliation Agreement

1                   3.        Respondents violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-Hour  
2 Notices for contributions totaling \$1,895,956.

3                   VI.     1.        Respondents will pay a penalty of three hundred and seventy-five  
4 thousand dollars (\$375,000) to resolve both the complaint-generated matters and the  
5 administrative fine determination pursuant to 2 U.S.C. §§ 437g(a)(4) and (5)(A). The  
6 administrative fine accounts for \$191,135 of the total penalty.

7                   2.        Respondents will cease and desist from violating 2 U.S.C. §§ 434(a), (b)  
8 and 441a(f).

9                   3.        Respondents will file with the Commission, in coordination with the  
10 Reports Analysis Division, an amendment to OFA's 2008 30 Day Post-General report that will  
11 identify the joint fundraising representative's original date of receipt for those contributions that  
12 are the subject of the reporting errors addressed in this conciliation agreement.

13                  4.        Respondents will confirm that they have refunded as necessary any  
14 contributions identified in the Section 437g audit as excessive and have amended their relevant  
15 disclosure reports. Respondents will disgorge to the U.S. Treasury any refunded contributions  
16 that the contributor fails to negotiate within thirty (30) days of the effective date of this  
17 agreement and will provide evidence of any disgorgement (copies of front and back of negotiated  
18 check) to the Commission.

19                  VII.     The Commission on its own motion or upon request of anyone filing a complaint  
20 under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein may review the Respondents'  
21 compliance with this agreement. If the Commission believes that this agreement or any of its  
22 requirements has been violated, it may institute a civil action for relief in the United States  
23 District Court for the District of Columbia.

MURs 6078, 6090, 6108, 6139, 6142 and 6214, and AF# 2412  
Conciliation Agreement

1       VIII. This agreement shall become effective as of the date that all parties hereto have  
2       executed the same and the Commission has approved the entire agreement.

3       IX. Respondents shall have no more than 30 days from the date this agreement  
4       becomes effective to comply with and implement the requirements contained in this agreement  
5       and to so notify the Commission.

6       X. This Conciliation Agreement constitutes the entire agreement between the parties  
7       on the matters raised herein, and no other statement, promise, or agreement, either written or  
8       oral, made by either party or by agents of either party, that is not contained in this written  
9       agreement shall be enforceable.

10

11      FOR THE COMMISSION:

12      Anthony Herman  
13      General Counsel

14  
15  
16      BY:   
17      Daniel A. Petalas  
18      Associate General Counsel  
19      for Enforcement

12-7-12  
Date

20  
21  
22  
23      FOR THE RESPONDENTS:

24  
25  
26  
27        
28      Obama for America and  
29      Martin Nesbitt in his official  
      capacity as Treasurer

11-14-12  
Date